SUPREME COURT OF THE UNITED STATES.

No. 91.—October Term, 1920.

El Banco Popular de Economias y Prestamos de San Juan, P. R., Appellant,
vs.
Elias B. Wilcox.

Appeal from the United States Circuit Court of Appeals for the First Circuit.

[February 28, 1921.]

Mr. Chief Justice White delivered the opinion of the Court.

In a suit in the United States District Court for Porto Rico where the appellant, a bank incorporated in Porto Rico was plaintiff, and the appellee a citizen of the United States was defendant, a final decree in favor of the bank was rendered, and from that decree the defendant took the case to the Circuit Court of Appeals for the First Circuit.

Upon a reversal of the decree in that court, the bank brought this appeal, and upon a motion to dismiss for want of jurisdiction, we are required to determine its right to do so. The appellant, not denying that the jurisdiction of this court to review judgments or decrees of the District Court for Porto Rico in cases such as the present one was taken away by the Act conferring upon the Circuit Court of Appeals of the First Circuit appellate power over that subject (Act of Jan. 28, 1915, c. 22, sec. 1; *id.*, sec 2, amending secs. 128 and 238 Jud. Code; *id.*, sec. 3, repealing sec. 244 Jud. Code; 38 Stat. 803, 804), nevertheless insists that by virtue of the jurisdiction of this court to review judgments and decrees of the circuit courts of appeals, the power taken away is in substance preserved if only successive appeals be resorted to. This rests upon the proposition that as the Act transferring the jurisdiction from this to the circuit court of appeals brought this case within the jurisdiction of the latter court, it hence subjected the decree in this case to the test of finality and the right of review

provided in section 128 of the Judicial Code controlling those subjects. While if the section be considered superficially the argument is plausible, its unsoundness becomes apparent by the briefest examination of the context and genesis of the section. Virtually every word of the section relied upon to establish that the decree was not final and to justify the asserted right to review it in this court depends upon limitations expressed in the Judiciary Act of 1891 and which were intended to carry out the great purposes of that Act, to distribute the appellate power of the courts of the United States in the proper sense and were therefore inapplicable to the Porto Rican court. To illustrate, one of the broad distinctions made in the distribution of appellate power under the Act of 1891 depended upon whether the jurisdiction of the Federal court as fixed by law was exclusively called into play because of diverse citizenship, in the constitutional sense, or whether the jurisdiction was invoked because, aside from diverse citizenship, there existed a Federal right or question; a judgment being in one case made final in one court where it was not in the other, and also being subject to one method of review in the one and a different in the other. Thus the proposition is, that because by Act of Congress jurisdiction was conferred upon the circuit court of appeals to review a judgment of the Porto Rican court, therefore by the mere exertion of that jurisdiction the Porto Rican judgment was brought under the control, as to finality and review, of provisions having no possible application or relation to it.

The Act of Congress by which jurisdiction was conferred upon the Circuit Court of Appeals for the First Circuit additionally makes clear the misconception upon which the argument rests. At the time that Act was passed the jurisdiction of this court to review the Porto Rican court embraced two classes of cases, the one involving enumerated Federal questions, in the true sense, and the other where the power depended upon the amount involved. Sec. 244 Jud. Code. But the transferring Act did not divest this court of appellate jurisdiction over the Porto Rican court, but on the contrary preserved its authority, although in some respects limiting and in others enlarging it, and transferred to the circuit courts of appeals appellate jurisdiction in all cases other than those in which jurisdiction by direct appeal was conferred upon this court, unless otherwise provided by law,—a result which clearly negates that it

was contemplated that a right to successive appeals should exist, and which moreover indisputably shows that it was the purpose of Congress not to give the circuit court of appeals an authority which it could not exert compatibly with the distribution of Federal appellate judicial power made by the Act of 1891.

Indeed, we might well have spared ourselves the duty of expressing the considerations we have stated since the proposition relied upon is virtually foreclosed by the ruling in *Inter-Island Steam Navigation Co.* v. *Ward*, 242 U. S. 1. There a judgment of the Circuit Court of Appeals of the Ninth Circuit, affirming a judgment of the Supreme Court of Hawaii, was brought here by appeal on the theory of the right to successive appeals now relied upon. Coming to consider whether there was jurisdiction to entertain the appeal, and pointing out a reservation of jurisdiction in this court made by the Act transferring authority to the Circuit Court of Appeals of the Ninth Circuit to review the Hawaiian court, similar in character to that made with reference to the Porto Rican court which we have previously noticed, it was held that there was no jurisdiction in this court, (a) because of the inferences properly to be drawn from the reservation in the Act of Congress just referred to; (b) because of the impossibility of supposing that jurisdiction was taken away from this court and yet virtually restored by successive appeals, and (c) because of the difference between the systems of judicature obtaining as to the courts of the United States under the Constitution and those of Hawaii making the right to review in the one depend upon legislative limitations not governing as to the other.

It follows from what we have said and from the principles sustained by the ruling in the case just stated that we are without jurisdiction to entertain the appeal which is before us, and it must be and is, therefore,

Dismissed for want of jurisdiction.

A true copy.

Test:

Clerk Supreme Court, U. S.